

OLC RECORD COPY

PROLES


CIC 78-836/6

14 August 1978

MEMORANDUM FOR THE RECORD


SUBJECT: CIA Proposed Amendments to S. 3314, Federal
Tort Claims Act

1. The undersigned spoke with Mr. Bernard Martin of OMB regarding CIA proposed amendments (attached) to S. 3314, the Federal Tort Claims Act.
2. Mr. Martin informed me that Justice had received our proposals and would review the same with OMB reporting Justice's comments to me later this week.
3. Outlook: According to Justice, the Senate Judiciary Committee, before which the the bill is pending, does not intend to take action (mark-up) until the House has acted on the House version of the bill. Further, it appears unlikely, according to Justice and OMB, that the House Judiciary Committee will get around to consideration of the bill. Ergo, all concerned believe that the bill will die for this session.
4. Notwithstanding the foregoing, this office will continue to monitor events or lack thereof on this important legislation.


Assistant Legislative Counsel

Attachment

Distribution:

- 1 - OGC 
- 1 - FPH
- 1 - LLM

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110062-5

1 - OLC Subject

1 - OLC Chrono

OLC:MDC:sm(15 August 78)

STAT

STAT

OFFICE OF DIRECTOR OF CENTRAL INTELLIGENCE

LEGISLATIVE COUNSEL
WASHINGTON, D.C. 20505

Telephone:

3 August 1978

TO: Mr. Robert E. Carlstrom
Legislative Reference Division
Office of Management and Budget

Bob:

Enclosed you will find our several
proposed amendments to S. 3314.

I believe that they are self-explanatory;
however, should you have questions please
feel free to contact this office. We appreciate
your continued attention to this matter.

Frederick P. Hitz
Legislative Counsel

Enclosure

FORM 1533C
4-75

(40)

Section 7806(1). All regulations issued under this section shall be subject to the public comment provisions of Section 553 of title 5, notwithstanding subsection (a) of section 553, United States Code and subject to judicial review under Chapter 7 of title 5. The court's review shall be held in camera for matters specifically protected from disclosure by statute, by Executive Order relating to the national security, national defense, or foreign affairs, or in the court's own discretion if it determines that in camera review is necessary.

INSERT FOREGOING IN LIEU OF CURRENT SECTION 7806(d).

Section 7803(c): After the word witnesses on page 16, line 13 insert...

, however this discretion shall not be construed to provide access by unauthorized persons to information specifically protected from disclosure by statute, or by Executive Order relating to the national security, national defense, or foreign affairs.

Section 7: New Section (e)(1): Where a tort suit for injury or loss of property or personal injury or death resulting from the negligent or wrongful act or omission of any officer or employee of the Government, or a tort suit arising from the violation of the Constitution of the United States, is commenced against an individual who is no longer an employee of the Government or who is an appointee of the President as defined in chapter 78 of title 5, upon certification of the Attorney General at any time before trial that such defendant was acting within the scope of his office or employment or, with regard to torts arising under the Constitution of the United States, that such defendant was acting within the scope of his authority or with a reasonable good faith belief in the lawfulness of his conduct, at the time of the incident out of which the suit arose, the Attorney General shall provide legal representation for such defendant employee.

(e)(2): Upon certification by the Attorney General that a defendant who is no longer an employee of the government or who is an appointee of the President was acting within the scope of his office or employment or, with regard to torts arising under the Constitution of the United States, that such defendant was acting within the scope of his authority or with a reasonable good faith belief in the lawfulness of his conduct, at the time of the incident out of which the suit arose, any such civil action or proceeding

Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110062-5

Remanded in a State court shall be removed, without bond, at any time before trial, by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending. The Certification of the Attorney General shall conclusively establish that a defendant who is no longer an employee of the Government or who is an appointee of the President was acting within the scope of his office or employment and, with regard to torts arising under the Constitution of the United States, was acting within the scope of his authority or with a reasonable good faith belief in the lawfulness of his conduct for purposes of such initial removal. Should a district court of the United States determine on a hearing on a motion to remand held before trial on the merits that the defendant was not acting within the scope of his office or employment and, with regard to torts arising under the Constitution of the United States, was not acting within the scope of his authority or with a reasonable good faith belief in the lawfulness of his conduct the case shall be remanded to the State court in which it was initially filed.

REDESIGNATE SUBSECTION (e) AS SUBSECTION (f) AND ADD THE ABOVE LANGUAGE AS NEW SUBSECTION (e).